NOTES OF CASES.

Continuances—Refusal after Attempt to Lynch Accused.—In Fountain *v.* State, 107 Atl. 554, 5 A. L. R. 908, the Court of Appeals of Maryland held that it was reversible error to refuse to adjourn or postpone the trial of one accused of crime, where a mob attempted to lynch him when he was passing from the court room to the jail, from which he escaped by flight, and was brought back under heavy guard.

The court said: "While we should be entirely satisfied to rest our decision simply upon the elementary rule of right and justice which the appellant has invoked, there are adjudications in other states which fully support the conclusion we have reached. State *v.* Weldon, 91 S. E. 29, 74 S. E. 43, 39 L. R. A. (N. S.) 667, Ann. Cas. 1913E, 801; Massey *v.* State, 31 Tex. Cr. R. 371, 20 S. W. 758; Frederickson *v.* State, 44 Tex. Cr. R. 288, 70 S. W. 754; Collier *v.* State, 115 Ga. 803, 42 S. E. 226; State *v.* Wilcox, 131 N. C. 707, 42 S. E. 536; People *v.* Fleming, 166 Cal. 357, 136 Pac. 291, Ann. Cas. 1915B, 881; State *v.* Manns, 48 W. Va. 480, 37 S. E. 613; Capps *v.* State, 109 Ark. 193, 159 S. W. 193, 46 L. R. A. (N. S.) 741, Ann. Cas. 1915C, 957; Sanders *v.* State, 85 Ind. 318, 44 Am. Rep. 29."

Life Insurance—Death in Common Disaster—Right to Proceeds.—In Watkins *v.* Home Life & Accident Ins. Co., 208 S. W. 587, the Supreme Court of Arkansas held that under a policy providing that if the beneficiary should die before the insured the interest of the beneficiary should vest in insured, the beneficiary had a qualified interest, and where both perished in a common disaster, and there was no proof as to which one died first, insurance was payable to representatives of beneficiary.

The court said in part: "It is well settled at common law that when two or more persons perish in the same disaster, and there is no fact or circumstance tending to prove which survived the other, there is no presumption whatever on the subject. The law treats the case as one to be established by evidence, and, in the absence of proof tending to show which one died first, all will be considered to have perished at the same moment, not because that fact is presumed, but because from failure to prove it the actual survivorship is unascertainable, and property rights must be settled as if death occurred to all at the same time. 8 R. C. L. p. 716; Young Women's Christian Home *v.* French, 187 U. S. 401, 47 L. ed. 233, 23 Sup. Ct. Rep. 184; 1 Greenl. Ev. 16th ed. § 30, p. 126; Lawson, Presumptive Ev. p. 298; United States Casualty Co. *v.* Kacer, 169 Mo. 301, 58 L. R. A. 436, 69 S. W. 370, 92 Am. St. Rep. 641; Re Wil-

bor, 51 L. R. A. 863, and note (20 R. I. 126, 78 Am. St. Rep. 842, 37 Atl. 634), and St. John *v.* Andrews Institute, 191 N. Y. 254, 83 N. E. 981, 14 Ann. Cas. 708. The rule that there is no presumption of survivorship in a common disaster applies where the insured and beneficiary died in a common disaster. 14 R. C. L. p. 1380. In the absence of any presumption as to which died first, the law requires evidence as a foundation for action in the matter. The burden of proof is always upon him who has the affirmative, and if he fails to discharge it with evidence legally sufficient for the purpose, he must suffer defeat. The adversary party succeeds, not upon proof of his own case, but by reason of the absence of evidence on the part of him who has the burden of proof. The authorities are divided upon the question of where the burden of proof lies in cases like this. In some of the cases it is held that the contract in policies like the one in the present case is made conditional on the beneficiary surviving, and that, there being no presumption, in case of death from a common disaster, that the beneficiary has survived the insured, the burden of proof is upon the representatives of the beneficiary, because the conditional benefit becomes absolute only upon proof of actual survivorship. Middeke *v.* Balker, 198 Ill. 590, 59 L. R. A. 653, 92 Am. St. Rep. 284, 64 N. E. 1002, and Males *v.* Sovereign Camp, W. W., 20 Tex. Civ. App. 184, 70 S. W. 108. Other cases hold that the result is the same as though the insured died first, on the theory that the beneficiary did not die in the lifetime of the insured. Cowman *v.* Rogers, 73 Md. 403, 10 L. R. A. 550, 21 Atl. 64; United States Casualty Co. *v.* Kacer, 169 Mo. 301, 58 L. R. A. 436, 92 Am. St. Rep. 641, 69 S. W. 370, and Faul *v.* Hulick, 18 App. D. C 9. We think the latter rule is more in accord with the trend of our decisions."

Elections—Wrongful Deprivation of Right to Vote.—In Wayne *v.* Venable, 260 Fed. 64, the U. S. Circuit Court of Appeals for the Eighth Circuit, held that an action for damages in a proper federal court lies by a qualified voter for his wrongful deprivation of his constitutional right to vote for a member of Congress by a defendant or by an effective conspiracy of several defendants.

The court said in part: "The right of qualified electors to vote for a member of Congress at a general state election, which is also an election at which a Congressman is to be lawfully voted for and elected, is a right 'fundamentally based upon the Constitution [of the United States], which created the office of member of Congress, and declared it should be elective, and pointed to the means of ascertaining who should be electors.' Ex parte Yarbrough, 110 U. S. 655, 664, 665, 4 Sup. Ct. 158, 28 L. Ed. 274. An action for damages in the proper federal court lies by a qualified elector for his wrong-